23) In 1987 the Council sued me for the $3,708.00 in the Magistrates Court at Bendigo. I defended the claim on the ground that I was not liable. The magistrate found against me.

24) I appealed to the Supreme Court and Mr. Justice Kaye found in my favour. Now produced and shown to me is a true copy of the Judgement of Mr. Justice Kaye marked "GAT-3"

25) On the basis of my state of mind referred to in paragraph 22 of this affidavit and encouraged by the judgement of Mr. Justice Kaye, I initiated the 1988 proceedings in the County Court to recover the moneys mistakenly paid pursuant to the Bank Guarantees. I also claimed damages for losses occasioned by the mistaken calling up of the Bank Guarantees. (The Summons and Amended Statement of claim in County Court proceeding 880949 are now exhibited at tab 2 and tab 3 of the exhibit folder of Michelle Elizabeth Dixon marked "MED-1")

26) On the second day of hearing the Council and Water Board made an offer of $40,000.00 to settle the matter. I was advised that I should accept the offer of settlement. I agreed and terms of settlement were drawn and signed. (The Terms of Settlement in County Court proceeding 880949 are now exhibited at tab 14 of the exhibit folder of Michelle Elizabeth Dixon marked "MED-1") At the time of signing the terms of settlement Counsel for the Council and Water Board handed me a large black folder containing copies of various documents. I took this material home and gave it a cursory glance but because I considered the matter to be at an end, I archived the folder and did not look again at its contents until August 2000. Had I been aware of the matters deposed in paragraph 56 of this affidavit at the time of signing the Terms of Settlement I would not have settled the 1988 proceedings.

Prior Proceedings, Woodleigh Heights. Supreme Court proceeding 7966 of 1995 ("the 1995 proceeding)

27) As stated previously in this affidavit, at the time of purchasing the Woodleigh Heights land I believed that water was available to the allotments and that the allotments were useable. Between about April 1984 and about November 1989 the Council and Water Board represented to my mortgagors and I that water was not available to my allotments, as a result of which building permits could not be obtained and the allotments were therefore unusable. These representations were initially conveyed in a sequence of letters between my mortgagee, Australian Guarantee Corporation ("AGC"), and the defendants. Now produced and shown to me and marked as follows is that series of letters. Letter from AGC dated 29th November 1984 marked "GAT-4A", Letter from Kyneton Water Board dated 7th December 1984 marked "GAT-4B", Letter from Shire of Kyneton dated 20th December 1984 marked "GAT-4C", Letter Office duplicate copy letter from AGC dated 9th April 1985 marked "GAT-4D", Letter from Kyneton Water Board dated 3rd May 1985 marked "GAT4E", Letter from Kyneton Water Board dated 7th May 1985 marked "GAT-4F"

(During this period Graeme Noel Wilson ("Wilson") was the Shire Engineer, Porter was the Secretary of the Council and the Water Board however Porter retired in late 1984 and was replaced by David Parkinson ("Parkinson") in both positions)

28) During the period from about 1985 until 1989 both the Council and Water Board refused to allow me access to the relevant files. Eventually in about March of 1995, after Wilson and Parkinson were retrenched, I was finally granted access to the files. Upon viewing the files I discovered, inter alia, the documents, facts and circumstances now referred to in paragraphs W2 to W5 inclusive of the present Statement of Claim.

29) As a result of perusing the files referred to in paragraph 28 of this affidavit I formed the following state of mind:-

a) That the operation of law and in particular the Interim Development Order then in force required the subdivision to be completed according to the terms of planning permit no. 2191 ("PP219").

b) The terms of PP2191 required that the development be carried out in accordance with the plans and submissions which formed part of the application.

c) The said plans and submissions specifically included a reticulated water supply under the control and ownership of the Body Corporate.

d) That because of subparagraphs a), b), and c) above, a water supply should have been present at the time that the Plans of Cluster Subdivision were sealed by the Council and when I subsequently purchased my allotments.

e) It followed therefore, from a) to d) above, that the representations of the Council and the Water Board referred to in paragraph 27 of this affidavit were false. Now produced and shown to me marked with the letters "GAT-5A" is a copy of PP2191 and marked with the letters "GAT-5B" is a copy of the submission referred to in paragraph b).

30) Having acquired the sate of knowledge referred to in the previous paragraph I issued the 1995 proceedings against the Council and Water Board. In the 1995 proceedings I alleged that the representations by the Council and Water Board that my allotments did not have access to a reticulated water supply were fraudulent representations. (The Amended Further Statement of Claim in the 1995 Supreme Court proceeding is now exhibited at tab 16 of the exhibit folder of Michelle Elizabeth Dixon marked "MED-1")

31) After a number of interlocutory hearings the Court eventually ordered mediation in about 1999. Mr.George Golvan QC was engaged as mediator. I have read and crave leave to refer to the affidavit of Mr. Steven Edward sworn 12th September 2005 and filed in these proceedings ("the Edward affidavit") and in particular paragraph 22 of that affidavit. To the extent that paragraph 22 of that affidavit implies that Mr. Nevile represented me at mediation I deny that implication. I was unrepresented. Mr. Nevile is a solicitor and a personal friend He was not retained by me in the mediation and had no knowledge of the case. Mr Neville agreed to accompany me solely to lend